

# **APPENDIX “B”**



DEPARTMENT OF THE ARMY

NEW YORK DISTRICT, CORPS OF ENGINEERS  
ALBANY FIELD OFFICE  
1 BOND STREET  
TROY, NEW YORK 12180

REPLY TO  
ATTENTION OF:

Regulatory Branch

APR 7 2006

SUBJECT: Permit Application Number 2005-00830-YN  
by Stonybrook Land, LLC

David Lipinski  
Stonybrook Land, LLC  
41 Park Street, Room 4  
Adams, Massachusetts 01220

Dear Mr. Lipinski:

On August 8, 2005, the New York District of the U.S. Army Corps of Engineers received your request for a Department of the Army jurisdictional determination for a 50.35 acre portion of a 555.9 acre site that is currently owned by Stonybrook Land, LLC. The site is in the Hudson River watershed, and is located at the end of Pond View Way in the Town of Grafton, Rensselaer County, New York. The proposed project would involve the construction of Phase II of a residential subdivision currently known as "Waters Edge".

In the letter received on August 8, 2005, your office submitted a proposed delineation of the extent of waters of the United States within the project boundary. Site inspections were conducted by a representative of this office on September 13 and October 13, 2005, in which it was agreed that changes would be made to the delineation and that the modified delineation would be submitted to this office. On January 11, 2006, this office received the modified delineation.

Based on the material submitted and the observations of the representative of this office during the site visits, this site has been determined to contain jurisdictional waters of the United States based on the presence of wetlands determined by the occurrence of hydrophytic vegetation, hydric soils and wetland hydrology according to criteria established in the 1987 "Corps of Engineers Wetlands Delineation Manual," Technical Report Y-87-1 that are either adjacent to or part of a tributary system, the presence of a defined water body (e.g. stream channel, lake, pond, river, etc.) which is part of a tributary system, and the fact that the location includes property below the ordinary high water mark of a water body as determined by the presence of physical markings including, but not limited to, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter or debris or other characteristics of the surrounding area.

These jurisdictional waters of the United States are shown on the drawing entitled "Topographic and Wetland Delineation Survey, Waters Edge - Phase II, a Portion of Lands N/F of Stonybrook Land, LLC", prepared by Brian R. Holbriiter Land Surveying and Site Development, dated July 26, 2005, and last revised December 22, 2005. This drawing indicates that there are four wetlands that total 4.68 acres and a total of 2,269 linear feet of intermittent stream channels within the 50.35 acre project site. The wetlands are identified as Wetland Areas 1, 2, 6 and 7 on the above referenced drawing. These waters are part of a tributary system that discharges into the Poesten Kill, and are considered to be waters of the United States.

It should be noted that, in light of the U.S. Supreme Court decision (*Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, No. 99-1178, January 9, 2001), the remainder of the wetlands shown on the above referenced drawing do not meet the current criteria of waters of the United States under Section 404 of the Clean Water Act. These wetlands are identified as Wetland Areas 4 and 5 and consist of a total of 0.03 acre on the 50.35 acre site. The Court ruled that isolated, intrastate waters can no longer be considered waters of the United States, based solely upon their use by migratory birds.

This determination regarding the delineation shall be considered valid for a period of five years from the date of this letter unless new information warrants revision of the determination before the expiration date.

This letter contains an approved jurisdictional determination for your subject site. If you object to this determination, you may request an administrative appeal under Corps regulations at 33 CFR Part 331. Enclosed is a combined Notification of Appeal Process (NAP) and Request For Appeal (RFA) form. If you request to appeal this determination you must submit a completed RFA form to the North Atlantic Division Office at the following address:

James W. Haggerty, Regulatory Appeals Review Officer  
North Atlantic Division, U.S. Army Engineer Division  
Fort Hamilton Military Community  
General Lee Avenue, Building 301  
Brooklyn, New York 11252-6700

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR Part 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP. Should you decide to submit an RFA form, it must be received at the above address by JUN 5 2006. It is not necessary to submit an RFA form to the Division Office if you do not object to the determination in this letter.

This determination has been conducted to identify the limits of the Corps Clean Water Act jurisdiction for the particular site identified in this request.\*\* This determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985, as amended. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service prior to starting work.

On January 11, 2006, the New York District Corps of Engineers received your request for Department of the Army authorization for the discharge of fill material into waters of the United States to facilitate the construction of Phase II of the residential subdivision known as "Waters Edge" on the subject 50.35 acre site. It should be noted that this office previously authorized the discharge of fill material into 0.29 acre of wetlands to facilitate the construction of Phase I of this subdivision.

Your submittals dated January 11 and February 16, 2006, including the drawings entitled "Waters Edge - Phase II, T/O Grafton, Rensselaer County, New York", Sheets 2 through 13, prepared by Harold Berger, P.E., with Sheets 2 and 3 and Sheets 6 through 8 dated April 2005 and last revised February 15, 2006, Sheet 5 dated April 2005, Sheet 12 dated September 2005, and Sheet 4, Sheets 8 through 11, and Sheet 13 dated September 2005, and last revised on February 15, 2006, indicate that the total proposed impacts would involve the discharge of fill material into 0.17 acre of waters of the United States, including wetlands and 264 linear feet of intermittent stream channel to facilitate the construction of an approximately 4,800 foot long by 20 foot wide road through the subdivision. A culvert and scour protection would be installed at each of the four crossings through waters of the United States. The construction of the road would also result in the loss of 0.03 acre of wetlands that were determined to be isolated and not subject to Department of the Army jurisdiction. The construction of housing Lots 8 through 18, the construction of required stormwater management practices, and the installation of utilities would not impact waters of the United States. As mitigation for the proposed impacts to aquatic resources, you propose to preserve the remaining waters of the United States on Lots 8 through 18, and preserve an additional 192 acre portion of your property that contains approximately 21.5 acres of wetlands and 3,000 linear feet of streams.

Based on the information submitted to this office, and accomplishment of notification in accordance with the applicable federal requirements, our review of the project indicates that an individual permit is not required. It appears that the activities within the jurisdiction of this office could be

accomplished under Department of the Army Nationwide General Permit Number 14. The nationwide permits are prescribed as an Issuance of Nationwide Permits in the Federal Register dated January 15, 2002 (67 FR 2020). The work may be performed without further authorization from this office provided the activity complies with the permit conditions listed in Section B, No. 14, Section C, any applicable New York District regional conditions, the following special conditions, and any applicable regional conditions added by the State of New York, copies enclosed.

#### Special Conditions

(A) The permittee shall undertake the authorized filling activities in a manner aimed at reducing impacts upon the general environment. In addition, the permittee shall not stockpile fill or other materials in a manner conducive to erosion, or in areas likely to cause high turbidity runoff during storm events. All exposed soils shall be re-vegetated in a timely manner to further reduce potential effects. The permittee shall also fence off all wetlands, the historic sites, and other sensitive ecological areas during construction periods to prevent equipment and personnel from entering these areas. All fencing and erosion and sediment controls shall be maintained in effective operating order during construction and shall be removed from the site upon completion of the work shown on the referenced plans.

(B) The permittee shall secure a conservation easement or deed restriction on the remaining waters of the United States within Lots 8 through 18, on the entire 192 acre site known as the "recreational parcel", and on the historic sites on Lots 13 through 15 to guarantee their preservation for wetland, wildlife and historic resources. Copies of the instrument(s) effecting such easement shall be submitted to the New York District Corps of Engineers for approval prior to execution, and the instrument(s) shall be executed and recorded with the Rensselaer County Registrar of Deeds within six months of the date of this letter.

This determination covers only the work described in the submitted material. Any major changes in the project may require additional authorizations from the New York District.

Care should be taken so that construction materials, including debris, do not enter any waterway to become drift or pollution hazards. You are to contact the appropriate state and local government officials to ensure that the subject work is performed in compliance with their requirements.

This verification is valid for a period of two years from the date of this letter, unless the nationwide permit is modified, suspended or revoked. This verification will remain valid for two years from the date of this letter if the activity

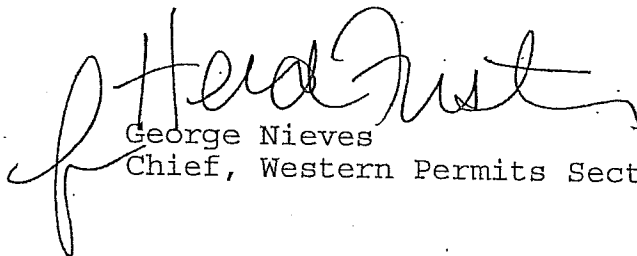
complies with the terms of any subsequent modifications of the nationwide permit authorization. If the nationwide permits are suspended, revoked, or modified in such a way that the activity would no longer comply with the terms and conditions of a nationwide permit, and the proposed activity has commenced, or is under contract to commence, the permittee shall have 12 months from the date of such action to complete the activity.

This authorization is conditional on the applicant's receipt of the required water quality certificate or waiver from the New York State Department of Environmental Conservation (NYSDEC). No work may be accomplished until the required approval from NYSDEC has been obtained.

Within 30 days of the completion of the activity authorized by this permit and any mitigation required by this permit, you are to sign and submit the attached compliance certification form to this office.

If any questions should arise concerning this matter, please contact Christine Delorier, of my staff, at (518) 273-7420.

Sincerely,



George Nieves  
Chief, Western Permits Section

Enclosures

cf: NYSDEC-Region 4, Schenectady (4-3826-00038/00001)  
Town of Grafton  
J. Bonafide, NYSOPRHP (05PR02507)  
A. Gitchell, CENAN-OP-RH